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April 25, 2017

Mr. Pat Grubb
268 Elizabeth Drive
Point Roberts, WA 98281

Email Transmittal
pgrubb@pointrobertspress.com

Re: April 19, 2017 Open Public Meeting Act Allegations

Dear Mr. Grubb:

As you are aware, I serve as general counsel to Whatcom County Fire Protection District No. 5. My client has requested that I clarify the record and respond to the erroneous allegations contained in your April 19, 2017 email regarding the commissioner's compliance with the Open Public Meetings Act "OPMA."

In your email, you allege that the presence of commissioners Meursing and Tomsen at a Point Roberts Hospital District's regular meeting constituted a violation of the OIPMA because both commissioners made comments to the Hospital District Board on an issue. You claim this was a "discussion" and that the commissioners "telegraphed" their positions and therefore engaged in "final action." You also claim that commissioners Meursing and Riffle are disregarding the OPMA because they are "frequently seen together in public." What is absent from your conclusory and inflammatory allegations are any facts that support your position.

RCW 42.30.070 expressly recognizes that a quorum of a legislative body may "gather for purposes other than a regular meeting or special meeting" provided that official business is not transacted. This provision has been interpreted by the State Attorney General to specifically allow a quorum of a legislative body to "attend a public meeting called by a third party." (AGO 2006 No. 6). Similarly, the Municipal Research and Services Center (MRSC), a widely-respected authority on municipal law and the OPMA has advised that RCW 42.30.070 expressly exempts "social gatherings" from the OPMA.¹ Accordingly, consistent with RCW 42.30.070, a quorum of fire district commissioners have legal authority to gather socially or attend other public meetings or community functions as long as the members do not engage in action or final action as that term is defined under the OPMA.

The Open Public Meetings Act defines the terms action and final action in RCW 42.30.020(3) as follows:

¹ <http://mrsc.org/Home/Research-Tools/Ask-MRSC-Archives/Legal.aspx#Are-social-gatherings-covered-by-the-Act>

"Action" means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. "Final action" means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

Your email alleges no facts that support or even suggest that commissioner Meursing and Riffle have engaged in action outside of an open public meeting. Commissioners Meursing and Riffle have the right to socialize in public or in private at any time they wish and such socializing is not only expressly authorized by the OPMA but is consistent with the spirit and letter of the OPMA and their rights as citizens. Absent any facts to support your opinions, we request that you refrain from disparaging the reputations of Mr. Meursing and Mr. Riffle and they will continue to socialize with each other in the future as they see fit.

Your email also fails to identify that Commissioner Meursing or Commissioner Tomsen engaged in any action or final action at the Point Roberts Hospital District meeting. I note, for the record, that commissioner Meursing contacted me prior to attending this meeting to confirm that he could attend provided he did not engage in any discussions with Commissioner Tomsen.

While each commissioner may have made comments to the Hospital District Board on matters relating to the fire district, Mr. Meursing made clear that he was speaking as a private citizen and not as an official spokesperson of the District. In fact, Mr. Meursing was not authorized by the Board to speak on its behalf so he had no legal authority to take a position on behalf of the Board. As elected officials do not sacrifice their first amendment rights when elected to office, Mr. Meursing has a legal right to make such comments and the simple fact that he is a commissioner does not transform his personal opinions into the transaction of the official business of the District.

Even if commissioner Meursing had been speaking on behalf of the District, to my knowledge, and based on your email, it does not appear that either commissioner Meursing or Tomsen engaged each other in any discussions. For action to occur under the OPMA discussions must occur "**between** a majority of the members" of a governing body. *Matter of Recall of Beasley*, 128 Wn.2d 419, 426 (1996) (emphasis added). Absent any discussion between commissioners Meursing and Tomsen, no action of the Board of Commissioners occurred. To suggest otherwise would prohibit commissioners from stating their opinions or position in any public forum whether it be a Hospital District Board meeting or a letter to the editor.

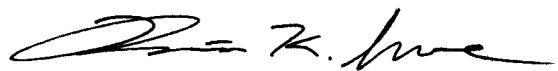
Finally, your claim that the commissioners somehow "telegraphed" their positions resulting in final action is equally misguided. First, it is unclear what you mean by "telegraphed," second, absent any actual collective communication between the commissioners to make a collective decision, it would be impossible, under the Open Public Meetings Act, for a final action to occur.

Page 3

We request that you refrain from making any further unfounded accusations against the commissioners of Whatcom County Fire Protection District 5.

Very Truly Yours,

SNURE LAW OFFICE, PSC



Brian K. Snure

cc: Client via email
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